

REMARKS

The Examiner's action dated November 29, 2007, has been received, and its contents carefully noted.

In accordance with the examiner's requirement, submitted herewith is a new declaration.

The indication that claims 9-13 would be allowable if placed in independent form and that claim 14 would be allowable if amended to overcome rejections under 35 U.S.C. § 112, second paragraph, are noted with appreciation.

However, since applicant believes that claim 8 distinguishes patentability over the applied reference, the allowable claims have been retained in dependent form. Claim 14 has been amended to eliminate the informality noted in the action.

In response to the objections to the specification, submitted herewith is a replacement abstract, as well as a substitute specification containing pages that are numbered consecutively. In addition, a number of typographical and spelling errors, including those specifically pointed out by the Examiner, have been corrected, and the required section headings have been provided.

In addition, the paragraphs in bold font have been replaced by identical paragraphs; however, undersigned is not aware of any rule prohibiting bold text in an application specification.

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The rejection of claim 8 as anticipated by Pera is respectfully traversed for the reason that the novel structure defined therein is not disclosed in the applied reference.

As a preliminary matter, it must be pointed out that the reference relied upon is not available as prior art against the claims of this application since that application has a filing date (January 20, 2004) that is after the filing date of the present application, which is the International filing date of October 13, 2003.

Since, however, the same disclosure appears to be present in U.S. Patent No. 6,679,255, which is a parent to the '059 patent, the rejection will be treated substantively.

However, please note that a rejection of claim 8 on a different reference cannot be made final because claim 8 has not been amended.

Claim 8 distinguishes over the disclosure of U.S. Patent No. 7,025,059 in several significant respects.

It is noted that the rejection is based on the embodiment shown in Figures 18-22 of the applied reference and it is that embodiment to which the following comments will be directed.

The inhaler according to the present invention differs significantly from that shown in Figures 18-22 of the reference in that, according to the invention, the portion of

the capsule that is cut away in order to make the contents of the capsule available to the user remains outside the inhaler, while the portion of the capsule that is cut in the reference device is trapped within the inhaler, in a filter 11.

Apparently, when the capsule is cut in the reference device, only the portion of the product to be inhaled that was contained in the cut portion will drop into filter 11 in order to be inhaled. However, that product, or at least the major part thereof, will be trapped to a certain extent within the cut portion of the capsule, and this will interfere with liberation of the product for inhalation. Any of the product that is not contained in the cut-off part of the capsule will be trapped above plate 8H.

It might additionally be noted that the inhaler shown in Figures 18-22 of the reference appears to be an inoperative device. Specifically, the reference inhale does not appear to have any air inlet in which the product to be inhaled would be entrained when the inhaler is used. In addition, as will be explained in greater detail below, it appears to be impossible to remove cut capsule portions from the inhaler.

One of the significant structural distinctions between claim 8 of the application and the device shown in Figures 18-22 of the reference resides in the location of the

means for cutting off a portion of the capsule. As defined in application claim 8, these means are arranged peripherally on the first surface, with the result that the cut portion of the capsule will remain outside of the inhaler. In clear contrast, and contrary to the assertion presented in the explanation of the rejection of claim 8, the cutting means of the device shown in Figures 18-22 of the reference are not arranged peripherally on a surface.

Instead, the cutting means disclosed in the reference is constituted by the edge of an opening within blade element 8H and/or a hole 7H of element 6H. Clearly, neither the opening in blade 8H, nor hole 7H can be considered to be peripheral.

In fact, it is not clear from the disclosure of this reference which element constitutes the cutting means. Thus, at column 13, lines 38-39, it is stated that blade 8H cuts the lower part of the capsule, while at column 20, lines 6-12, element 6H is described as a cutting element that can cut the lower part of the capsule by means of the blade 8H.

This distinction is particularly significant because it appears, from a careful study of reference specification and as noted earlier herein, that it is, in fact, impossible to remove the cut portion of the capsule from the inhaler shown in Figures 18-22 of the applied reference. As disclosed

in that reference, the cut portion of the capsule drops into a filter 11. Figure 18 shows that the filter is integral with chambers 1 and 3. Moreover, there is no disclosure in this reference that blade element 8H is removable from chamber 1. Thus, in the embodiment shown in Figures 18-22 of the reference, to the extent that this embodiment is disclosed in the patent specification, it is impossible to remove the cut portion of the capsule from the inhaler.

A further clear distinction over the applied reference resides in the fact that in the operation of an inhaler according to the present invention, the housing containing a capsule is aligned with the hole in the first surface of the main body when the second body, in which the housing is provided, is in a closed position and the cutting means operation to cut off a portion of the capsule during rotation of the second body to the closed position. These recitations clearly establish that in the inhaler according to the present invention, the housing containing the capsule is aligned with the hole in the first surface of the main body after the capsule has been cut, and this is directly opposite to the operation of the inhaler disclosed in the reference.

Specifically, in the embodiment show in Figures 18-22 of the applied reference, the hole 7H is aligned with the hole in blade element 8H only at a time before cutting of the

capsule has begun. As soon as cutting begins, hole 7H is no longer aligned with the hole in blade 8H.

Concerning one final point, in the explanation of the rejection, the Examiner has equated the first and second surface defined in application claim 8 to the annular surface 13a, 13b of chamber 1 and the annular surface 12a, 12b of cover 3H. However, it must be noted that these surfaces do not contact one another. As clearly disclosed in the reference, when the cover 3H is assembled to a chamber 3, protrusions 12a, 12b stop under protrusions 13a, 13b (specification, column 13, lines 24-25). In other words, the surfaces identified by the Examiner as a first surface and a second surface never contact one another.

In view of the foregoing, it is submitted that claim 8 clearly distinguishes patentably over the applied reference, at least by the recitations that the second body is able to rotate from an open position, in which the housing is accessible from outside for insertion of a capsule, and a closed position, in which the housing is aligned with the hole; the inhalator also comprises cutting means for cutting off a portion of a capsule which projects from the housing during rotation of the second body from the open position to the closed position, said means for cutting comprising a

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cutting edge arranged peripheral on the first surface, a cut portion of said capsule remaining external of the inhalator.

Accordingly, it is requested that the prior art rejection of claim 8 be reconsidered and withdrawn, that all of the pending claims be allowed and that the application be found in allowable condition.

If the above amendment should not now place the application in condition for allowance, the Examiner is invited to call undersigned counsel to resolve any remaining issues.

Respectfully submitted,

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